

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE MAY 24, 2002

AMENDED IN SENATE MAY 9, 2002

**SENATE BILL**

**No. 1269**

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**Introduced by Senator Peace**

January 15, 2002

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An act to amend Section 25534 of the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1269, as amended, Peace. Powerplant site and facility certification.

The existing Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. Existing law authorizes the commission, after hearings, to amend the conditions of, or revoke the certification for, any facility for specified reasons and to administratively impose a civil penalty for specified violations of a certification of up to \$50,000 per violation, as prescribed.

Existing law establishes in state government the California Consumer Power and Conservation Financing Authority, with powers and responsibilities as prescribed, including the power to issue revenue bonds for the purpose of augmenting electric generating facilities and to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective, energy-efficient appliances

and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electric powerplants, renewable energy and conservation, and, where appropriate, developing strategies for the authority to facilitate a dependable supply of natural gas at reasonable prices to the public.

This bill would authorize the commission to administratively impose a civil penalty for specified violations of up to \$75,000, as prescribed.

This bill would require a project owner to commence construction of a project within 12 months after the project has been certified by the commission *and all accompanying project permits have been issued and administrative and judicial appeals have been completed*. The bill would require a project owner to submit construction and commercial operation milestones within 30 days after project certification. The bill would specify that the failure of the project owner to meet construction or commercial operation milestones, without a finding of good cause, is cause for revocation of certification or the imposition of other penalties. The bill would ~~authorize~~ *require* the commission to extend the start of construction by ~~12~~ 24 months under certain circumstances.

This bill would require the commission to revoke the certification and provide immediate notice of its decision to the authority if the project owner fails to commence construction, without good cause, within 12 months after the project has been certified and the *project* owner has not received an extension. The bill would require the authority to evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority ~~informs~~ *demonstrates to* the commission that it ~~will~~ *it is willing and able to* construct the project, the bill would require the commission to promptly issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. The bill would require the commission, if it issues a new certification, to adopt new milestones for the project that allow the authority up to ~~12~~ 24 months to start construction or to start to meet the applicable milestones. The bill would specify that those provisions do not apply to specified qualifying small power production facilities or qualifying cogeneration facilities, as provided, ~~or~~ any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load, *or specified licenses issued to local publicly owned electric utilities that make a specified certification*.



The bill would authorize the commission and authority to jointly adopt emergency regulations for the purposes of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) Reliable, reasonably priced electricity service is essential  
4 for California's economic growth and for the health and welfare  
5 of its citizens.  
6 (b) The Legislature, through Assembly Bill 970 of the  
7 1999-2000 Regular Session and Senate Bill 28 of the 2001-02  
8 First Extraordinary Session, and the Governor, through Executive  
9 orders issued pursuant to his emergency powers, have acted to  
10 expedite the construction of in-state electric generation facilities  
11 by accelerating the State Energy Resources Conservation and  
12 Development Commission's powerplant certification process,  
13 ~~signed~~ *signing* long-term contracts for the electricity production  
14 of planned facilities, and ~~provided~~ *offering* incentives for rapid  
15 powerplant construction.  
16 (c) However, ~~since~~ *because* it is critical for the welfare of the  
17 state and its citizens that entities that obtain certification to  
18 construct new ~~powerplants and to expand or repower existing~~  
19 ~~powerplants do so~~ *powerplants do so* with all due speed, it is the  
20 policy of the state to condition the issuance of powerplant  
21 certification to require prompt, continuous, good faith efforts to  
22 construct the certified project within its original construction  
23 schedule.  
24 (d) It is further the policy of the state that, in the event a  
25 certificate holder fails to demonstrate prompt, continuous, good  
26 faith efforts to construct new powerplants, the commission may  
27 revoke the certification of the original project owner and issue a  
28 new certification to the California Consumer Power and  
29 Conservation Financing Authority to construct the ~~project if the~~  
30 ~~authority timely informs the commission that it will~~ *project if the*  
31 *authority demonstrates to the commission that is willing and able*  
32 *to construct the project either independently or in conjunction with*  
33 *any other public or private entity, including the original licensee.*

1 SEC. 2. Section 25534 of the Public Resources Code is  
2 amended to read:

3 25534. (a) The commission may, after one or more hearings,  
4 amend the conditions of, or revoke the certification for, any facility  
5 for any of the following reasons:

6 (1) Any material false statement set forth in the application,  
7 presented in proceedings of the commission, or included in  
8 supplemental documentation provided by the applicant.

9 (2) Any significant failure to comply with the terms or  
10 conditions of approval of the application, as specified by the  
11 commission in its written decision.

12 (3) A violation of this division or any regulation or order issued  
13 by the commission under this division.

14 ~~(4) For permits issued after January 1, 2003, the project owner~~  
15 ~~does not start construction of the project within 12 months of the~~  
16 ~~date of certification, without good cause, and does not receive~~  
17 ~~subsequent approval from the commission to extend the start of~~  
18 ~~construction of the project under subdivision (f).~~

19 *(4) For permit applications filed and deemed complete after*  
20 *January 1, 2003, where the project owner, without good cause,*  
21 *does not start construction of the project within 12 months of the*  
22 *date when all permits necessary for the project have been issued*  
23 *and all administrative and judicial appeals have been resolved,*  
24 *unless the project owner receives subsequent approval from the*  
25 *commission to extend the start of construction of the project under*  
26 *subdivision (f), or the California Consumer Power and*  
27 *Conservation Financing Power Authority informs the commission*  
28 *it will construct the project pursuant to subdivision (g).*

29 (b) The commission may also administratively impose a civil  
30 penalty for a violation of paragraph (1) or (2) of subdivision (a).  
31 Any civil penalty shall be imposed in accordance with Section  
32 25534.1 and may not exceed seventy-five thousand dollars  
33 (\$75,000) per violation, except that the civil penalty may be  
34 increased by an amount not to exceed one thousand five hundred  
35 dollars (\$1,500) per day for each day in which the violation occurs  
36 or persists, but the total of the per day penalties may not exceed  
37 fifty thousand dollars (\$50,000).

38 (c) A project owner shall commence construction of a project  
39 within 12 months after the project has been certified by the  
40 commission *and after all accompanying project permits are final*

*and administrative and judicial appeals have been completed.* The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the project owner to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet ~~milestones~~ *the start of construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c)* shall be made if the commission determines that any of the following criteria are met:

(1) The change in any *deadline or* milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The *deadline or* milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The *deadline or* milestone will be missed but the project owner demonstrates a good faith effort to meet the project *deadline or* milestone.

(4) The *deadline or* milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project *deadline or* milestone.

~~(f) In the absence of good cause, the commission may extend the start of construction by 12 months if the owner reimburses the commission for the~~

(5) *The deadline or milestone will be missed for any other reason determined reasonable by the commission.*

(f) *The commission shall extend the start of the construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project. For the purposes of this section, the commission's actual cost of licensing the project shall be based*

1 on a certified audit report filed by the commission staff within 180  
2 days of the commission's certification of the project. The certified  
3 audit shall be filed and served on all parties to the proceeding, is  
4 subject to public review and comment, and is subject to at least one  
5 public hearing if requested by the project owner.

6 (g) If the project owner fails to commence construction,  
7 without good cause, within 12 months after the project has been  
8 certified by the commission and has not received an extension  
9 pursuant to subdivision (f), the commission shall provide  
10 immediate notice to the California Consumer Power and  
11 Conservation Financing Authority. The authority shall evaluate  
12 whether to pursue the project independently or in conjunction with  
13 any other public or private entity, including the original certificate  
14 holder. ~~If the authority informs the commission that it will~~ holder.  
15 *If the authority demonstrates to the commission that it is willing*  
16 *and able to construct the project either independently or in*  
17 *conjunction with any other public or private entity, including the*  
18 *original certificate holder, the commission may revoke the original*  
19 *certification and issue a new certification for the project to the*  
20 *authority, unless the authority's statutory authorization to finance*  
21 *or approve new programs, enterprises, or projects has expired. If*  
22 *the authority declines to pursue the project, the permit shall remain*  
23 *with the current project owner until it expires pursuant to the*  
24 *regulations adopted by the commission.*

25 (h) If the commission issues a new certification for the project  
26 to the authority, the commission shall adopt new milestones for the  
27 project that allow the authority up to ~~12~~ 24 months to start  
28 construction of the project or to start to meet the applicable  
29 milestones. *If the authority fails to begin construction in*  
30 *conformity with the deadlines or milestones adopted by the*  
31 *commission, without good cause, the certification may be revoked.*

32 (i) (1) If the commission issues a new certification for the  
33 project to the authority and the authority pursues the project,  
34 without participation of the original certificate holder, the  
35 authority ~~will~~ *shall offer to* reimburse the original certificate  
36 holder for the actual costs the original certificate holder incurred  
37 in permitting the project and in procuring assets associated with  
38 the license, including, but not limited to, major equipment and the  
39 emission offsets. In order to receive reimbursement, the original  
40 certificate holder shall provide to the commission documentation

1 of the actual costs incurred in permitting the project. The  
2 commission shall validate those costs. *The certificate holder may*  
3 *refuse to accept the offer of reimbursement for any asset associated*  
4 *with the license and retain the asset. To the extent the certificate*  
5 *holder chooses to accept the offer for an asset, it shall provide the*  
6 *authority with the asset.*

7 (2) If the authority reimburses the original certificate holder for  
8 the costs described in paragraph (1), the original certificate holder  
9 shall provide the authority with all of the assets for which the  
10 original certificate holder received reimbursement.

11 (j) This section does not prevent the certificate holder from  
12 selling its license to construct and operate the project prior to its  
13 revocation by the commission. In the event of a sale to an entity  
14 that is not an affiliate of the certificate holder, the commission shall  
15 adopt new milestones for the project that allow the new certificate  
16 holder up to 12 months to start construction of the project or to start  
17 to meet the applicable milestones.

18 (k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j),  
19 inclusive, do not apply to licenses issued for the modernization,  
20 repowering, replacement, or refurbishment of existing facilities or  
21 to a qualifying small power production facility or a qualifying  
22 cogeneration facility within the meaning of Sections 201 and 210  
23 of Title II of the federal Public Utility Regulatory Policies Act of  
24 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the  
25 regulations adopted pursuant to those sections by the Federal  
26 Energy Regulatory Commission (18 C.F.R. Parts 292.101 to  
27 292.602, inclusive), nor shall those provisions apply to any other  
28 generation units installed, operated, and maintained at a customer  
29 site exclusively to serve that facility's load. For the purposes of this  
30 subdivision, "replacement" of an existing facility includes, but is  
31 not limited to, a comparable project at a location different than the  
32 facility being replaced, provided that the commission certifies that  
33 the new project will result in the decommissioning of the existing  
34 facility.

35 (l) Paragraph (4) of subdivision (a) and subdivisions (c) to (j),  
36 inclusive, do not apply to licenses issued to "local publicly owned  
37 electric utilities" as defined in subdivision (d) of Section 9604 of  
38 the Public Utilities Code whose governing bodies certify to the  
39 commission that the project is needed to meet the projected native  
40 load of the local publicly owned utility.



1     (m) To implement this section, the commission and the  
2 California Consumer Power and Conservation Financing  
3 Authority may jointly adopt emergency regulations in accordance  
4 with Chapter 3.5 (commencing with Section 11340) of Part 1 of  
5 Division 3 of Title 2 of the Government Code. For purposes of that  
6 chapter, including, without limitation, Section 11349.6 of the  
7 Government Code, the adoption of the regulations shall be  
8 considered by the Office of Administrative Law to be necessary  
9 for the immediate preservation of the public peace, health and  
10 safety, or general welfare.

